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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 29, 2002

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE000551

Ex Parte: In the matter concerning the application of Virginia Electric and Power Company d/b/a Dominion Virginia Power for approval of a plan to transfer functional control of certain transmission facilities to a Regional Transmission Entity

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUE000550

Ex Parte: In the matter concerning the application of Appalachian Power Company d/b/a American Electric Power -Virginia for approval of a plan to transfer functional control of certain transmission facilities to a Regional Transmission Entity

ORDER

This Order addresses the November 19, 2001, motion of the Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Company" or "Virginia Power") seeking to reestablish a procedural schedule in Case No. PUE000551.¹ Additionally, on November 30,

¹ The Company's motion seeks to establish a new schedule for hearings, as well as for the filing of supplemental information (concerning the Company's application in this proceeding), supplemental testimony, and exhibits. Reciprocal supplements are proposed for the Staff and parties to the proceeding as well.

2001, AEP Virginia ("AEP"), whose RTO² companion case is Case No. PUE000550, filed its "Statement of AEP-VA Supporting & Adopting the Motion of Virginia Electric and Power Company to Establish Procedural Schedule" ("AEP's Statement of November 30"). Because of the interrelationship between these dockets vis-à-vis the procedural schedules previously established therein (which established joint hearings on issues common to both proceedings) and later suspended as discussed below, our order herein will address both cases. Case No. PUE000550 is thus before us on our own motion.³

The prior suspension of both proceedings resulted from a July 27, 2001, Order ("July 27 Order") in which the Commission, in the interest of conserving legal and regulatory resources, suspended the procedural schedules in Case No. PUE000551 and Case No. PUE000550 then scheduled to begin on July 30. The July 27 Order responded to a motion filed by the Commission Staff, with the concurrence of Virginia Power and AEP Virginia, seeking such suspensions in light of compliance filings to be made in August 2001 by AEP and Virginia Power at the FERC concerning the then-proposed Alliance Regional Transmission Organization ("Alliance" or "Alliance RTO"). The filings materially affected the status of the Alliance (whose members included both AEP and Virginia Power) before this Commission in proceedings under §§ 56-577 and 56-579 of the Virginia Electric Utility Restructuring Act ("Restructuring Act" or "Act"). Both AEP and Virginia Power then sought to transfer the management and control of their transmission assets to the Alliance.

² The terms "RTO" and "regional transmission organization" are derived from the Federal Energy Regulatory Commission's ("FERC") Order 2000. The Virginia Electric Utility Restructuring Act (that predated Order 2000) in §§ 56-577 and 56-579 refers to such entities as "regional transmission entities" or "RTEs." The terms are essentially interchangeable; thus, for the sake of simplicity we will refer to such entities in this order as RTOs.

³ While AEP's Statement of November 30 requested that the Commission adopt an integrated procedural schedule for the AEP RTO case (PUE0000550) as well as for the Virginia Power RTO Case (PUE000551), such statement was filed essentially as a response to Virginia Power's November 19, 2001, motion, and not as a formal motion in PUE000550 pursuant to 5 VAC 5-20-110. Consequently, in order to have PUE000550 properly before us, we will do so on our own motion, taking judicial notice of AEP's statement of November 30 in PUE000551, as well as AEP's December 21, 2001 statement discussed below.

As noted above, the Commission agreed with the Staff and the companies, and by order of July 27, 2001, suspended the procedural schedules in Case No. PUE000551 and Case No. PUE000550. No subsequent activity has occurred in either docket.

In its response to Virginia Power's November 19, 2001, motion in Case No. PUE000551, the Commission Staff stated that it was not opposed to reestablishing procedural schedules for both Case No. PUE000551 and Case No. PUE000550. The Staff did, however, urge this Commission to do so only when it was clear that convening these hearings made legal and regulatory sense. Specifically, the Staff emphasized the pendency of several critical motions before the FERC concerning and affecting the viability and operation of the Alliance.⁴

On December 20, 2001, the FERC issued five orders related to the formation of RTOs within the Midwest region (which for FERC's purposes presently includes Virginia). This series of orders included an order specifically responding to motions for rehearing and other relief in the Alliance dockets before the FERC, and identified in the Staff's comments on Virginia Power's motion now before us.⁵ Briefly stated, the FERC disapproved the Alliance as an RTO, finding that it did not satisfy certain key requirements of the FERC's Order 2000.⁶

⁴Specifically, the Staff stated that "It is manifest from the recitation of motions and other proceedings detailed above that are currently pending before the FERC in the various Alliance dockets and sub-dockets and that are all presently awaiting FERC decision, that the application of Virginia Power in this proceeding (as well as that of AEP Virginia in the companion docket, Case No. PUE000550) cannot be viewed as ready for hearing. Put simply, the very issues identified as vital to this Commission's determinations under its rules are the very issues unresolved at the FERC. The critical issues of Alliance governance, business structure, market monitoring, and stakeholder participation, now awaiting FERC action form gaping holes in these Virginia utilities' (Virginia Power and AEP Virginia) applications to this Commission. Thus, it is inconceivable to the Staff that any proceeding can go forward before this Commission until these vital issues are resolved." See, Staff Response at 9.

⁵ Staff's Response, pp. 5-7.

⁶ In that Order (Alliance Companies, et al, 97 FERC ¶ 61,327 (2001)), the FERC granted rehearing of its prior finding that the Alliance RTO had adequate scope. The FERC found that the Alliance lacked sufficient scope to exist as a stand-alone RTO. All other requests for rehearing were dismissed based on the FERC's finding that the public interest would best be served if Alliance were to join the Midwest ISO ("MISO"). The FERC also terminated many of the Alliance sub-dockets, as well as various related rate filings, including AEP's and Virginia Power's in ER01-2995-000 and ER01-2993-000. The FERC further directed the Alliance Companies to explore how their business plan can be accommodated within the MISO, and to file statements of their respective plans to join an RTO within 60 days of the order.

On December 20, 2001, Virginia Power filed its Reply to the Staff's December 10, 2001 response to the motion before us. In that Reply, the Company described the FERC's December 20 Order concerning the Alliance. As noted by the Company:

In its order, FERC determined that the Alliance RTO has been unable to meet the conditions necessary to give it sufficient scope, and found that the public interest would best be served if Alliance were to join the Midwest ISO. ". . .[A]dditionally, FERC observed that the Midwest ISO may not be the ideal RTO for all of the Alliance Companies, (stating, for example, Dominion Virginia Power may prefer to join another RTO), and, if so, those companies should explore membership in another RTO."⁷

Finally, the Company advised that the FERC's December 20 Order directed Virginia Power and the other Alliance companies to file statements concerning their respective plans to join an RTO, including the timeframe, within 60 days of that order. Accordingly, and in view of the FERC's order, the Company indicated that a "further temporary suspension of the procedural schedule is appropriate in order to permit Dominion Virginia Power to file its plans to join an RTO."⁸ The Company further indicates that it will be discussing this mandatory FERC filing with this Commission's Staff. Finally, the Company states that "[A]fter making the FERC filing the Company will make appropriate filings with the Commission with regard to its RTO plans."⁹

We also note that on December 21, 2001, AEP filed its "Statement of AEP-VA Regarding Motion of Virginia Electric and Power Company to Establish Procedural Schedule" ("AEP's December 21 Statement"). The document made reference to the FERC's December 20, 2001, orders discussed above, and noted that AEP was then reviewing them. AEP went on to state that "...it appears...that in light of those orders, Dominion Virginia Power's and AEP's proposed procedural schedule is not viable. AEP reserves its right to make an alternative

⁷ Virginia Power's Reply at 2.

⁸ Virginia Power Reply at 3.

⁹ Id.

proposal depending upon future events and the Commission's disposition of Dominion Virginia Power's Motion."¹⁰

NOW THE COMMISSION, having considered the motion, response and reply in Virginia Power's RTO proceeding before this Commission in Case No. PUE000551, and having further considered, on its own motion, corresponding procedural issues with respect to AEP's RTO proceeding in Case No. PUE000550 (as manifest in AEP's November 30 and December 21 Statements), is of the opinion that the procedural schedules in both cases should remain suspended, pending clarification of both companies' RTO plans, via their filings at FERC as directed by the FERC's December 20 Order.

We also anticipate that the companies will either update or re-file their applications under §§ 56-577 and 56-579 of the Restructuring Act (and this Commission's implementing regulations) at their earliest opportunity to ensure that the state-jurisdictional components of their respective RTO obligations mandated by the Virginia General Assembly move forward as expeditiously as possible.

Accordingly, IT IS ORDERED THAT the procedural schedules in Virginia Power's RTO case before this Commission (Case No. PUE000551), and AEP's RTO case before this Commission (Case No. PUE000550), shall remain suspended pending further order of this Commission.

¹⁰ AEP's December 21 Statement, at 2.